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Supreme Court, U.S.
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No. 94-60

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

IN RE ANTWAN BYRD,

Petitioner,

vs.

PRESENTMENT AGENCY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK: SECOND JUDICIAL DEPARTMENT

BRIEF OF RESPONDENT COUNTY OF WESTCHESTER IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether on the facts of this case, the New York State courts below properly determined that Petitioner received a fair and unbiased trial in a juvenile delinquency proceeding, and that Petitioner failed to produce any evidence indicating that the trial court was biased against him or his family based on their religious preference?

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CITATIONS OF OPINIONS BELOW

Respondent accepts the Petitioner's citation of the opinions below which are reproduced in the Appendix to the Petition for Certiorari.

STATEMENT OF THE CASE

During the summer of 1992, Joseph G., a diminutive eight (8) year old boy who lives in Long Island, New York, with his mother, went to visit his father Richard G., who was residing with his girlfriend, Sharon Byrd, in Yonkers, New York. Also residing with Ms. Byrd was her son, Antwan Byrd, Petitioner herein, a large (five-feet, ten inches tall and weighing 260 pounds) thirteen (13) year old boy.

Mr. G. brought his son to Yonkers on or about August 3, 1992, to visit. On the night, of August 3, 1992, Joseph G. was asleep on the couch in the living room of the apartment his father shares with Sharon Byrd, and her son, Antwan Byrd. Late that evening, when Joseph was sleeping (wearing only his T-shirt and underpants), Antwan entered the living room and repeatedly shook Joseph

until he awoke. When Joseph woke up, Antwan sodomized him, ignoring both Joseph's pleas to stop and his loud crying. After he ejaculated, Antwan ran back to his room, whereupon Richard G. and Sharon Byrd, entered the living room and found Joseph crying. Because he was afraid, Joseph said nothing about the incident.

Joseph stayed at his father's home for approximately three to four weeks that summer. As Joseph later told authorities, this abuse by Antwan Byrd occurred, in one form or another, repeatedly.

At the end of the summer when Joseph returned to his mother's home on Long Island, the above-described events of the past summer were eventually revealed to her. This occurred when Ms. G. asked Joseph what was wrong with him and

Joseph started crying and told her "Antwan was messing with me. The whole time." Joseph proceeded to tell his mother of the sexual abuse to which he had been subjected by Antwan during that past summer. Upon hearing Joseph's account of the events, Ms. G. called a Child Protective Services caseworker and eventually the Yonkers, New York Police Department.

The Yonkers Police Department instituted an investigation into the allegations made by Joseph against Antwan Byrd and brought Joseph to the Yonkers Police station to file a complaint. In furtherance of that investigation, Joseph was examined by a physician at Saint Joseph's Hospital in Yonkers.

On September 25, 1992, Petitioner was arrested by the Yonkers Police Department

on various charges of sodomy and sexual abuse as defined by N.Y. Penal Law §130.50(1) and §130.65(1) (McKinney's 1994). He was then detained pending his appearance in the Westchester County Family Court, State of New York.

On October 5, 1992, a probable cause hearing was held in the Family Court, at which the victim, Joseph, testified. At the close of testimony, the Family Court held that there existed "probable cause to believe that conduct, which would be a crime of sodomy, if committed by an adult, was committed, and Antwan [Petitioner] committed it." Accordingly, Petitioner was remanded to a secure facility pending the commencement of a fact-finding hearing scheduled for October 30, 1992.

Decision of the Family Court

On November 2, 1992, the fact-finding hearing commenced and testimony was taken from a number of witnesses including the victim, his mother and Petitioner. At the conclusion of the fact-finding hearing, the Family Court found, "beyond a reasonable doubt," that Petitioner "committed conduct which if committed by an adult would constitute the crimes of Sodomy in the First degree [two counts], [as defined by N.Y. Penal Law] §130.50, subdivision (1), by forcible compulsion ...." and two counts of Sexual Abuse in the first degree as defined by N.Y. Penal Law §130.65(1) (McKinney's 1994). After rendering its decision, a dispositional hearing was scheduled for December 17, 1992.

At this hearing, testimony was taken from the Probation Officer assigned to

investigate the dispositional alternatives in this case. Accordingly, the Family Court was presented with psychological and psychiatric evaluations conducted on Petitioner while he was detained at the youth facility. The Family Court was also presented with the dispositional recommendation of the Westchester County Department of Probation. That recommendation was for Petitioner to be "placed with the New York State Division for Youth."

The Family Court accepted the recommendation of the Department of Probation and the other experts who conducted evaluations in this case, and placed Petitioner with the New York State Division for Youth for a period of three (3) years pursuant to N.Y. Family Court Act §353.5 (McKinney's 1994).

Decision of the Supreme Court of the State of New York Appellate Division, Second Department

It is from the Order of Disposition that Petitioner appealed to the Supreme Court of the State of New York Appellate Division, Second Department. Matter of Antwan B., 198 A.D.2d 348 (2d Dep't. 1993) mot for leave to appeal denied, 83 N.Y.2d 755 (1994). On his appeal, Petitioner raised, inter alia, the issue of his right to a fair trial, including his allegation that the trial judge was biased against him based on his and his family's religious preferences.

Oral argument on the appeal was held on October 25, 1993. By Decision and Order dated November 15, 1993, the Appellate Division, Second Department, unanimously affirmed the Order of the Family Court, stating that the facts as presented were "legally sufficient to

establish the appellant's guilt of the acts charged beyond a reasonable doubt. Moreover, ... the finding of guilt was not against the weight of the evidence." (See Appendix C, p. 4a.)

In its decision, the Appellate Division, upon a meticulous review of the full record below, also considered all of Petitioner's claims of bias and discrimination, specifically his claim that the trial judge was biased against him and his family, and found them to be "without merit." (Id.)

Thereafter, Petitioner sought permission from the Appellate Division to appeal to the New York State Court of Appeals. On January 19, 1994, this motion was denied by the Appellate Division. (See Appendix D, p. 6a.)

Decision of the New York State Court of Appeals

After the Appellate Division of the Supreme Court, State of New York, denied Petitioner permission to appeal to the Court of Appeals, he sought permission directly from the New York State Court of Appeals. On May 3, 1994, the New York State Court of Appeals also denied Petitioner's motion for leave to appeal. (See Appendix B, p. 2a.)

SUMMARY OF ARGUMENT

This case is not of special importance as the decision of the Appellate Division of the Supreme Court of the State of New York, Second Department, conflicts with neither decisions of this Court nor with other Circuits.

The decision of the New York State Appellate Division, Second Department, at bar, was in complete accord with the rulings of this Court on this issue of an accused's right to Due Process and fair hearing as established by the Court in e.g. In Re Gault, 387 U.S. 1 (1967); Estes v. State of Texas, 381 U.S. 532 (1965), reh'g den, 382 U.S. 875 (1965); In Re Winship, 397 U.S. 358 (1970); Sheppard v. Maxwell, 384 U.S. 333 (1966); and Haley v. Ohio, 332 U.S. 596 (1948). As the lower Courts here ruled, and as

the record amply demonstrates, Petitioner has failed, as a matter of law, to establish that he was denied a fair trial or denied full protections afforded all those accused by the Due Process clause of the United States Constitution.

Petitioner was afforded a full and fair trial by the Courts of the State of New York at every level of review which fully protected all rights guaranteed Petitioner by the Constitution of the United States.

ARGUMENT

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

A. The Petition does not present special or important reasons warranting review

Notwithstanding his patent failure to present a scintilla of evidence to support his allegations, Petitioner bases his claim that he was deprived of a fair trial solely on statements of the Family Court Judge, most of which were made off-the-record, which he has taken completely out of their original context and given a twisted and distorted meaning. Not only has Petitioner mischaracterized the nature of these statements, he has disingenuously juxtaposed them out of their original time frames.

This Court, however, has never regarded its function as merely to

correct a perceived legal error by a disappointed litigant in a lower court decision.

Petitioner's claim that the trial court was biased against him is based totally on his perception of the facts surrounding his trial, a version of the facts found to be meritless by the reviewing Court, the New York State Appellate Division, Second Department. Since Petitioner's entire case is solely fact-specific, his baseless claims may be refuted with a recitation of what actually transpired at the trial.

Petitioner desperately seeks to distort the record below by alleging that the Family Court Judge made certain remarks revealing his purported bias against the Petitioner. These remarks, however, were taken completely out of context. For example, as the Family

Court Judge indicated, the statement regarding Petitioner going to school with the Judge's children was uttered during an off-the-record conversation at which counsel were discussing possible dispositional alternatives if Petitioner were to admit his guilt. Moreover, the discussions were initiated with a view toward settling the case.

Even though these discussions occurred prior to the conclusion of the fact-finding hearing, the conversation was purely hypothetical in nature in that the discussion was related to how Petitioner would receive counseling.

As the record indicates, the Family Court was concerned with how Petitioner would get help at the dispositional phase of the case if he continued to deny his involvement in the incident. The Court's statement was made in a hypothetical

context. Specifically, the parties were discussing possible dispositional alternatives, one of which was the release of Petitioner to the community in his grandmother's care. The Family Court Judge made the statement to emphasize that without receiving some form of therapy, he would not want Petitioner in school with his children. This feeling was especially warranted in light of all the prior testimony he had heard up to that point.

Prior to the off-the-record discussion, the Family Court had already heard testimony from the victim at the probable cause hearing and from the victim and his mother at the fact-finding hearing. The Family Court was, therefore entitled to lend some credence to what it had previously heard, and indicated to Petitioner's trial counsel that, up to that point, it believed some form of

therapy was needed for Petitioner. This did not indicate that the Family Court was predisposed to convict Petitioner or that it had already decided the case.

With respect to Petitioner's grandmother, the statement quoted by Petitioner on page 4-5 of his Petition for a Writ of Certiorari, is completely misleading as to when it was made, and therefore, so out of context, that it is rendered meaningless. Notwithstanding Petitioner's assertion, this statement was not made at the fact-finding hearing at which Petitioner was found to have committed the acts of Sodomy. It was made after a finding of guilt had been rendered, and during a fact-finding on a second unrelated charge of Sodomy.

Therefore, Petitioner's contention that he was denied a fair trial or that the Family Court was predisposed to

convict him is totally spurious and unfounded. There is no indication in the record that the Family Court was in any way biased against Petitioner, was closed-minded, or had a predetermined result.

In addition to misconstruing the Family Court's position, Petitioner blatantly tries to mislead this Court as he has unsuccessfully tried to mislead each Court in the New York State Court system at bar. In his petition for a Writ of Certiorari to this Court, Petitioner alleges he has been denied a fair trial due to the allegedly "prejudicial" and "discriminatory" remarks of the trial Court (see Petition, p. 9). In support of this contention, Petitioner cites statements made by the Family Court at his Dispositional Hearing concerning his

grandmother's presence at the hearing. At that point, the fact-finding phase of the proceedings was completed and Petitioner's involvement in acts of Sodomy and Sexual Abuse had already been established beyond a reasonable doubt. Therefore, statements alleged to be made at that dispositional phase of the case had no effect on the issue of determining Petitioner's guilt or innocence of the acts charged, since that question had already been decided.

B. There is no conflict between the New York State decisions below and the decisions of this Court

To the extent that Petitioner vainly attempts to present an issue to this Court regarding his claimed right to have his grandmother present during the dispositional phase of his case, this right is purely illusory and not based upon any

decision of either this Court or the Courts of New York. This Court has never held that a juvenile accused has the right to have anyone other than his or her parent or other legal custodian present at either a trial or a disposition of their case, and Petitioner has cited no case as authority for that spurious proposition. The grandmother, at bar, was not the legal custodian for the Petitioner. Therefore, Petitioner's grandmother had no right to be present at the dispositional hearing.

In fact, according to the N.Y. Family Court Act §341.2(3) (McKinney's 1994), at bar, only the accused's parent or other person responsible for his care has a statutory right to be present at all stages of the case. Therefore, excluding Petitioner's grandmother from the hearing in no way impaired Petitioner's constitu-

tional rights, given the fact that his mother, who is legal guardian, was present at all stages of the proceeding.

In conclusion, the record does not support Petitioner's contention that he has been denied the right to a fair and unbiased trial. The record and the evidence presented clearly demonstrate that the Family Court correctly held that Petitioner committed the acts alleged in the juvenile delinquency petition, and that his trial was both fair and unbiased. All of Petitioner's claims were fully addressed by appellate review in the State of New York and found to be without merit.

CONCLUSION

For the foregoing reasons, the petition for writ for certiorari should be denied.

Respectfully submitted,

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